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U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

AUG 11 2006

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research assistant scientist at the University of Minnesota. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes his work and explains why he believes he qualifies for a waiver:

Currently, I am employed as a Research Assistant Scientist in the Cancer Center/Department of Orthopedic Surgery at the University of Minnesota. My current research projects have been focusing on the molecular mechanisms regulating the ability of Runx2 to regulate the expression of genes required for tumor development and bone cell differentiation. Specifically, I am concentrating my research efforts on chromatin remodeling enzymes that may be recruited by Runx2 to osteoblast-specific promoters, the defects of which are directly linked to genetic and degenerative skeletal diseases and bone tumor formation. In addition, I am currently working on FHOD1, which is a protein responsible for regulating cytoskeletal organization, cell motility, and gene transcription. In this cutting-edge research, I am aiming at determining the mechanisms by which FHOD1 enhances cell motility and relates to various signaling pathways. . . . [M]y pivotal work is laying the groundwork to improve the treatment of bone diseases, bone and lung cancer, and leukemia at the molecular level. . . .

It would be contrary to the national interest to deprive the prospective employer of my services by making available to minimally qualified workers U.S. workers the position that I seek. I am far better qualified than a minimally qualified U.S. worker to perform this work because I am uniquely experienced in . . . elucidating the mechanisms regulating the ability of Runx2 to regulate the expression of genes required for tumor development and bone cell differentiation, as well as the mechanisms of FHOD1 . . . in cellular and developmental processes.

The petitioner asserts that his work “will lead to the development of novel drugs for cancer treatment” and “could lead to therapy that can ease or cure the patient’s suffering from osteoporosis or bone metastasis of cancer.”

The petitioner submits copies of his published articles and letters from several witnesses. Some of these witnesses either work in areas outside the petitioner’s specialty (for instance, one witness is an anesthesiologist) or else they do not identify their own specialty or area of expertise at all, and they do not explain how they came to know of the petitioner’s work. This information is relevant because it speaks to the nature and extent of the petitioner’s reputation in the field.

Other letters, however, come from witnesses with significant credentials in the petitioner’s field. For instance, [redacted] director of Systems Biology, Cancer Research and Enabling Biology, at [redacted] and [redacted] states:

My research focus in the last 10 years has been directed at identifying new agents, approaches, and therapies for the treatment of osteoporosis and other debilitating bone diseases such as metastatic bone disease. . . . It is related to this area that I know the work of [the petitioner] whose work has made major contributions to the field of bone biology. My knowledge of [the petitioner’s] work has been gained through *review of his published work*. *I do not personally know or have a relationship with him*. Hence my opinion is an objective assessment of his contributions and based on my expertise in this field of study. . . .

In my opinion, [the petitioner’s] work is outstanding and I have no doubt that his future work will continue to improve our understanding of Runx2, the key regulator of bone differentiation. To date, his work has made important insights into the development of potential targets for therapeutic interventions to treat osteoporosis, bone metastasis of cancer and other bone diseases.

(Emphasis in original.) Professor [redacted] of the University of Oxford states:

My research interests include clinical molecular genetics of skull and limb malformations and through this I have been aware of [the petitioner’s] important work on the biology of Runx2.

[The petitioner] has been doing outstanding research on the transcriptional regulation of Runx2 and FHOD1 since 2000. He is the first scientist in the world to purify and produce a portion of FHOD1 that was used as an antigen to make polyclonal antibodies. [The petitioner] is also the first to study the relationship between Runx2 and the chromatin modifier, HDAC6. These findings not only provide insights into the functions of Runx2, but also demonstrate the interaction between Runx2 and HDAC6. This interaction is important for regulating the expression of developing siRNA techniques on Runx2 and Cbfb. This invention is so conceptually new in the field of Runx2 and Cbfb, providing an economic and efficient way to suppress the expression of these two genes for the first time. It is foreseeable

that this invention will open a new research direction for studying Runx2 and Cbfb. Collectively, [the petitioner's] research findings have been significant contributions of relevance to bone formation and cancer metastasis. . . .

[The petitioner's] invention enables enormous acceleration of research progress (weeks rather than years). This speeds up long term research goals to prevent and cure bone tumours. . . .

His work in the United States has led to an important publication in *Molecular and Cellular Biology*. . . . Considering [the petitioner's] work to date and his wide expertise . . . it would understandably be extremely difficult, if not impossible, to replace him in the ongoing Runx2 and FHOD1 research.

[redacted] senior group leader at the Friedrich Miescher Institute for Biomedical Research, Basel, Switzerland, describes the petitioner's work and states that the petitioner's "research findings have been great contributions to the area of bone formation and cancer metastasis which could benefit millions of people worldwide."

Without first issuing a request for evidence, the director denied the petition, stating that while "testimonials from distinguished professionals" show that "the petitioner offers a notable benefit to his field of endeavor," nevertheless "[t]he documents of record do not adequately establish a sustained pattern of achievement at this point in the petitioner's career" that would merit a waiver. The director did not explain how the "testimonials from distinguished professionals" were deficient in this respect, given that the witness letters contained detailed descriptions of the petitioner's contributions and their significance.

The director observed that "the petitioner's level of accomplishment" does not appear to compare favorably to that of several witnesses. It is true that several witnesses appear to be highly distinguished in the field, but this is not necessarily a liability. If the petitioner were seeking classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Act, which requires a showing that he is at the very top of his field, then it would certainly be to his detriment that the witnesses' achievements so overshadow his own. Here, however, the petitioner need not establish that he is one of the top researchers in his field; he need only show that he stands out in the field to a sufficient extent to justify the conclusion that a waiver of the job offer requirement would be in the national interest. In such a circumstance, recommendations from very highly placed witnesses do not diminish the petitioner's own standing in the field; rather, they demonstrate that the petitioner's work has commanded the attention of high-ranking, respected figures in that field.

The director stated that "thousands of petitions filed each year requesting a waiver . . . are accompanied by evidence of the petitioner's or the beneficiary's published and cited novel and/or groundbreaking research and letters describing the vital importance of his or her work" (director's emphasis). While the director's reliance here on observations from other records of proceeding is troubling, we sympathize with the director's observation. In academia, the familiar phrase "publish or perish" demonstrates that publication of one's work is closer to a requirement than to a rare accolade. The existence of published work is far less persuasive than the impact of that work. The director referred to citation as a gauge of the impact of published work, but because the director had not issued a request for evidence prior to denying the petition, the petitioner had not

had an opportunity to supplement the record with evidence of such citation. The director's mention of citation in the denial notice itself was rather oblique, such that the petitioner still may not have had a clear idea of how important such evidence can be.

On appeal, the petitioner asserts that the director did not give sufficient weight to the witness letters submitted in support of the petition. We have already discussed examples of these letters, above. While the petitioner may not have offered evidence regarding citation of his published work, the letters demonstrate that the petitioner's work has garnered international attention (and not merely in the trivial sense that the petitioner's former classmates and co-workers have dispersed to different countries).

Other arguments by the petitioner are less persuasive. For example, the assertion that his work has produced "two NIH RO1 grants, and one patent pending" does not give a clear idea of the importance of his work. Grant funding appears to be a common source of support for scientific research, and the petitioner has not shown that the NIH grants he received enjoy rare prestige in the field, or that to obtain such a grant involves substantially more than a persuasive grant proposal. Published precedent specifically addresses the patent issue. Simply holding a patent is not *prima facie* evidence of eligibility for the waiver; the petitioner must establish the particular significance of the patented invention or innovation. See *Matter of New York State Dept. of Transportation* at 221, n.7. That being said, the petitioner's weaker arguments on appeal do not undermine or cancel out the stronger evidence that tends to support approval of the petition.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.